IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 18183 of 2003

Between:

Syed Azam, S/o. Syed Aziz,
H.No. 2-2-22, Aziz Bagh, Amberpet, Hyderabad - 500 013.

..... PETITIONER

AND

1 Government of Andhra Pradesh, Rep. by its Secretary Education Department, Secretariat Buildings, Hyderabad.
2 The District Educational Officer, Hyderabad District, Hyderabad.
3 The Head Mistress, Government Girls High School, Amberpet, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate writ, orders or direction and more particularly in the nature of Writ of Mandamus declaring that the acts, deeds and things of the respondents in not paying the rent for the building bearing House No. 2-3-521 situated at Amberpet, Hyderabad and as well as not vacating the building are illegal, arbitrary and much against to the legal and fundamental rights guaranteed under the Constitution of India and consequently direct the respondents : a) to pay the arrears of rent for the building bearing House No. 2-3-521, situated at Amberpet, Hyderabad - 500 013, due from March 1996 to August 2003 amounting to Rs. 40,500/-. b) to hand over the vacant and peaceful possession of the building bearing House No. 2-3-521, situated at Amberpet, Hyderabad- 500 013. c) to pass such other order or orders as deem fit and proper in the circumstances of the case and in the interest of justice, equity and good conscience otherwise the Writ Petitioner shall be put to grave hardship

Counsel for the Petitioner:MR.PALIVELASATYARAJA BABU

Counsel for the Respondent Nos.1 and 2: GP FOR SCHOOL EDUCATION

The Court made the following :

ORDER:

1. This writ petition has been filed by Syed Azam with a prayer to issue a writ, order or direction more particularly in the nature of writ of mandamus declaring that the acts, deeds and things of the respondents in not paying the rent for the building bearing House No. 2-3-521, situated at Amberpet, Hyderabad and not vacating the building are illegal and arbitrary and consequently direct the respondents to pay the arrears of rent and to hand over the vacant physical possession of the premises to him.

2. The petitioner is owner of house bearing No. 2-3-521, situated at Amberpet, Hyderabad. The said premises has been leased out to the 3rd respondent on a monthly rent of Rs. 450/- about 30 years back. It is the case of the petitioner that the 3rd respondent neither paid the rent nor vacated the premises and thus he approached this Court by invoking the extra ordinary jurisdiction under Article 226 of the Constitution of India for the reliefs stated supra.

3. The respondents filed counter-affidavit. One S.Jagannadha Reddy has sworn to the counter affidavit. It is stated in the counter-affidavit that the rents could not be paid because of non-execution of the rental agreement by the writ petitioner. The counter affidavit further reveals that the writ petitioner has been asked to execute rental agreement repeatedly, but the writ petitioner failed to execute the rental agreement. I deem it appropriate to refer the relevant portion in para-3 of the counter-affidavit and it is thus:

> *"The petitioner has to submit the rental agreement to be made by and between the house owner (petitioner) and Government of Andhra Pradesh. Due to non-submission of rental agreement Administrative sanction could not be granted . However, the Petitioner (house owner) has been informed by the Head Master, Govt. Girls High School, Amberpet, Hyderabad vide H.M.Letter Nos. 1) 555/Amberpet/97, dated 2-7-1997, 2) 564/GGHS A/02, dated 30-3-2002, 3)691/GGHS. A/2003/Dt. 4-2-2003 and 4) 755/GHS A/2003, dated 6-9-2003 to submit the rental agreement to obtain administration*

sanction, if the Administrative sanction is not accorded the Budget allotted to this regard will be lapsed. The budget has been allotted to the School as follows:

1. *DEO's Proc. Rc.No.101/A2/96-97, dt 28-11-96, Budget allotted Rs. 1350-00*
2. *DEO's Procs Rc.No.101/A2/96-97 dt 3-2-97, Budget allotted – Rs 4050-00*
3. *DEO's Procs Rc.No. 101/A7/97-98, dt.9-1-98 Budget allotted Rs. 1350/-*
4. *DEO's Procs Rc.No.101/A7/97-98, dt.2-1-98 Budget allotted Rs. 2250-00*
5. *IV quarter budget allotted for 1997-98 Rs.1800-00*
6. *DEO's Procs Rc.No. 4/A7/96 dt.15-1-1997 Budget allotted Rs. 450-00*
7. *DEO's Procs Rc.No. 30510/A5/99-2000 dt 8-12-99 Budget allotted Rs. 450-00*
8. *DEO's Procs Rc.No. 16822/A5/99-2000 dt. 18-12-99 Budget allotted Rs. 4500-00*

But the House owner (Petitioner did not submit the Rental Agreement till this date"

4. Heard the learned counsel for the petitioner and learned Government Pleader for School Education appearing on behalf of the respondents.

5. The learned counsel for the petitioner submits that the writ petition is maintainable since there is no dispute with regard to the relationship between the petitioner and the respondents as that of landlord and tenant. Reliance has been placed on the decision of Supreme Court in ***Hindustan Petroleum Corporation Limited Vs.Dolly Das*** and decision of our High Court in W.P.No. 22721 of 1998 and Batch dated 25-7-2001.

6. The learned Government Pleader for School Education appearing for Respondents 1 and 2 submits that the rents could not be paid to the petitioner because of the petitioner not submitting rental agreement in spite of repeated letters addressed to him by the Head Master of the school. He further submit that the facts involved in this case are in controversy and they require to be adjudicated by the

competent Court and thus writ petition is not maintainable.

7. Let me first deal with the first relief i.e. a direction to the respondents to pay the arrears of rents. It has come on record that repeated letters have been addressed to the petitioner requesting him to submit a rental agreement. Indeed funds have been allotted by the Government to the 3rd respondent School for payment of the rents. Since, the writ petitioner failed to execut a rental agreement, arrears could not be paid. Since the writ petitioner is at fault, no direction could be given to the respondents to pay the arrears of rents.

8. With regard to the 2nd relief sought for i.e. vacation of the premises. Admittedly, the premises in question comes within the purview of the Andhra Pradesh Building (Lease, Rent Eviction) Control Act, 1960 (for brevity “the Act”). If petitioner being the owner of the premises seeks eviction of the tenant, he has to satisfy the conditions stipulated in Section 10 of the Act.

9. Thus, in writ jurisdiction, no direction can be given to the respondents to vacate the premises.

10. Accordingly, the writ petition is devoid of merit and is hereby dismissed. No order as to costs.

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B.Seshasayana Reddy,J

13th July, 2005

Note:

C.C.in a week

B/o

KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Government of Andhra Pradesh, Education Department, Secretariat Buildings, Hyderabad.
2 The District Educational Officer, Hyderabad District, Hyderabad.
3 The Head Mistress, Government Girls High School, Amberpet, Hyderabad.

4, 2 CCs to G.P. for School Education, High Court Buildings, Hyderabad

(OUT)

5. 2 CD copies

6. 1 CC to MR.SATYARAJA BABU

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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